

ENERGY SAVINGS PERFORMANCE CONTRACTING STATUTES

MASSACHUSETTS (as of June 14, 2010)

	Statute	Procurement Method	Competitive Bidding/ Selection Requirements	Term of Contract	Guarantee Requirement	Restrictions/ Miscellaneous
State	ALM GL ch. 25A § 11C	RFP. ALM GL ch. 25A § 11C(a).	State agencies shall award contracts to the <u>lowest offeror demonstrably possessing the skill, ability and integrity necessary to perform faithfully energy management services</u> . Energy management contracts are exempt from bidding and other requirements applicable to public works contracts set forth in ALM GL ch. 149 §§ 44A, 44B, 44E-H. ALM GL ch. 25A § 11C(a).	20 years. ALM GL ch. 25A § 11C(a).	Permitted but not required. Payments under an energy management contract “may” be based on cost savings attributable to a reduction in energy/water consumption due to the contractor’s performance or revenues gained due to contractor’s services which are aimed at energy and water cost savings. ALM GL ch. 25A § 11C(a).	
	ALM GL ch. 25A, § 11I (alternative to § 11C)	RFQ. ALM GL ch. 25A, § 11I(c).	Competitive negotiation. The state shall evaluate and select 3 providers that can <u>best meets the needs of the public agency</u> and negotiate a contract with <u>the most qualified person</u> at compensation determined to be fair and reasonable. ALM GL ch. 25A § 11I(c) and (e). Energy management contracts are exempt from bidding and other requirements applicable to public works contracts set forth in ALM GL ch. 149 §§ 44A, 44B, 44E-H. ALM GL ch. 25A § 11C(c).	Not specified. [Note: formerly 20 years, prior to July 2, 2008 amendment.]	The amount of energy savings guaranteed shall be achieved or the provider shall reimburse the state agency, local governmental body or building authority for the shortfall amount. ALM GL ch. 25A § 11I(h).	

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Counties	ALM GL ch. 25A § 11C ALM GL ch. 25A § 11I	RFP. ALM GL ch. 25A § 11C(b). Same as for state.	Not specified. See local government policies, procedures and regulations. ALM GL ch. 25A § 11C(c). Although local government is not required to award to lowest bidder, it must explain in writing reasons for not doing so. ALM GL ch. 25A § 11C(c). Same as for state.	Not specified. See regulations promulgated by Commissioner of Capital Asset Management. ALM GL ch. 25A § 11C(c). Same as for state.	Not specified. Same as for state.	
Municipalities	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	
Townships/ Villages	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	
School Districts	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	Same as for counties.	
State Universities	Same as for state. <i>See</i> ALM GL ch. 25A § 3 for definitions	Same as for state.	Same as for state.	Same as for state.	Same as for state.	